

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONI DYWANE WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
November 7, 2013

No. 315829
Livingston Circuit Court
LC No. 12-020899-FH

Before: MURRAY, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from his plea of guilty to one count of possession of methamphetamine, second offense, MCL 333.7403(2)(b)(i). He was sentenced to serve 20 months' to 20 years' imprisonment, and to pay court costs and fees, including \$800 against the cost of his appointed defense attorney's services. We remand this case to the trial court for the ministerial task of correcting a clerical error concerning the due date for payment of his court costs and fees, and for remediation of any consequences of that error.

Defendant claims that his judgment of sentence contains a scrivener's error suggesting a premature due date for payment of his attorney fees and costs, and asks that the error be corrected and any late penalties voided. The prosecution concedes error in this regard. Alternatively, defendant asserts his constitutional right to an ability-to-pay assessment if payment of his attorney fees is being enforced. Because these issues were not raised below, we review for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In an oral statement from the bench, and in the space provided in the judgment of sentence for the court's recommendations, the trial court stated that the fees and costs would be payable upon defendant's parole. The lower court's register of actions includes an entry confirming that payment would be due upon parole. However, the judgment of sentence elsewhere indicates that payment is due as of the sentencing date, and that provision has apparently resulted in the assessment of late fees for failure to pay within fifty-six days.

Where a defendant has identified obvious clerical errors on a judgment of sentence, and the prosecution has acknowledged the error, a remand with instructions to correct the error is in order. See, e.g., *People v Katt*, 248 Mich App 282, 312; 639 NW2d 815 (2001), *aff'd* 468 Mich 272; 662 NW2d 12 (2003). An updated judgment of sentence must then be transmitted to the

Department of Corrections. See *People v Norman*, 148 Mich App 273, 276; 384 NW2d 147 (1986). We agree with the parties that the record demonstrates that the internal inconsistency in defendant's judgment of sentence resulted from a clerical error, and that the trial court in fact intended that the fees and costs become payable upon defendant's parole, rather than upon his sentencing date.

Because the clerical error will be corrected on remand, and thus the order for payment of attorney fees will not be enforced until defendant is paroled, there is no need for an ability-to-pay assessment at this time. See *People v Jackson*, 483 Mich 271, 292; 769 NW2d 630 (2009).

Accordingly, we remand this case to the trial court with instructions to amend the judgment of sentence to reflect that defendant's fees and costs become payable upon defendant's parole,¹ to forward a corrected version to the Department of Corrections, and to void any penalties or interest accrued to date. See MCR 7.216(A)(7).

Remanded for correction of a clerical error, and for remediation of any consequences of that error. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra

¹Presumably, the trial court also intended that defendant's fees and costs would become payable on defendant's discharge, in the event defendant did not receive parole. However, no mention of this was made at sentencing. The trial court may wish to address this issue in its amendment to the judgment of sentence.